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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,783	06/13/2006	Koji Moriyama	291921US0PCT	5030

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EXAMINER	
HAUTH, GALEN H	

ART UNIT	PAPER NUMBER
1742	

NOTIFICATION DATE	DELIVERY MODE
12/08/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/582,783	MORIYAMA ET AL.	
	Examiner	Art Unit	
	GALEN HAUTH	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 September 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *8,9,20 and 21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *8, 9, 20, and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application.
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Acknowledgment is made to applicant's amendment of claims 8 and 9 as well as the addition of claims 20 and 21.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 8, 9, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu (PN 4877840) in view of Miller et al. (PN 6469188).

a. With regards to claim 8, Chu teaches a method for granulating polyolefins (abstract) in which a resin composition comprising a flexible polyolefin resin of homopolymers of propylene (col 2 ln 18-32) are melted in an extruder (col 4 ln 5-8) and then are melt kneaded while cooling the resin to a temperature of the melting point of the resin or less (abstract). Chu does not teach that the

polymerization is carried out with a metallocene catalyst or the claimed properties and composition of the polyolefin.

b. Miller teaches a polyolefin system producing elastomeric polypropylene (abstract) which is useful for its utility and properties of recyclability, chemical resistivity, thermal stability, electrical conductivity, optical transparency, and processability (col 9 ln 47-51). The elastomeric polyolefin produced by Miller is attainable from propylene (abstract) with a metallocene (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the polyolefin of Miller in the polyolefin process of Chu for the reasons stated prior including increased processability. Miller teaches that the elastomeric polypropylene produced (Example 48 col 43-44 displayed in Table 5 entry 9) has a polypropylene with a (mm) of 76.7% by mole by adding the percentage of all groups containing the mm dyad. Miller additionally teaches that the probability of mm dyads in the formed polymer ranges from 50-75% (col 46-47, variable a = m dyad probability). Miller teaches that any melting temperature of the propylene may vary (col 5 ln 50-57) and teaches melting points of 88, 115, 98, and 91 degrees Celsius in various embodiments (Table 1). With regards to the limitation of crystallization time, the flexible polyolefin of Miller is the same polyolefin (propylene) prepared from the same catalyst type with similar melting temperatures and tacticity, the material would therefor inherently posses the claimed crystallization time.

NOTE: Where ... the claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the PTO can

require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. **Whether the rejection is based on "inherency" under 35 USC § 102, on prima facie obviousness" under 35 USC § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the PTO's inability to manufacture products or to obtain and compare prior art products."** In re Best, 562 F2d 1252, 1255, 195 USPQ 430, 433-4 (CCPA 1977).

c. With regards to claim 20, Chu teaches a method for granulating homopolymers of propylene (col 2 ln 18-32).

d. With regards to claims 9 and 21, Chu teaches that the extruder varies in temperature from 200 degrees Celsius in the first zone at the beginning of the extruder to 65 degrees Celsius in the cooling zone at the end of the extruder (col 6 ln 17-18), but failed to positively teach a cooling rate of 5-300 °C/min. However, absent any showing of unexpected benefit, the cooling rate claimed by the applicant would have been obvious in the art as such is taken to be a **result effective variable**, and would have been routinely optimized by those versed in the art.

Response to Arguments

5. Applicant's arguments filed 09/24/2010 have been fully considered but they are not persuasive.

a. With regards to applicant's argument that Chu does not teach the claimed limitations due to the inclusion of a modifying agent, this argument is not persuasive. The inclusion of a modifying agent in Chu does not take away from the teaching of Chu of granulation of a homopolymer as claimed by applicant. Chu explicitly teaches the granulation of the homopolymer of propylene and in

view of Miller teaches all the claim limitations. The claims as currently written do not preclude the inclusion of additional elements in the process.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to GALEN HAUTH whose telephone number is (571)270-5516. The examiner can normally be reached on Monday to Thursday 8:30am-5:00pm ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571)272-1176. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GHH/

/Christina Johnson/
Supervisory Patent Examiner, Art Unit 1742